IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1108 OF 2001

Purshottamdas Naraindas Adnani .. Appellant

Vs.

Narsingdas N. Adnani .. Respondent

Ms. Dipti Nazareth i/by Thakore Jariwala and Associates for appellant.

CORAM: B.H. MARLAPALLE, J.

Date : July 11, 2005.

P.C.:

1. Heard the learned counsel for the appellant who was plaintiff in Suit No. 6542 of 1980. After about 17 years the said suit came to be dismissed in default on 7/4/1997 by the learned Judge of the City Civil Court at Mumbai. Notice of Motion No.4149 of 1998 was taken out belatedly for restoration of the said suit and by the impugned order dated 16/6/1999 the learned Judge was pleased to dismiss the Motion.

2. It appears that the order of dismissal in

default was passed as a last resort. On 13/2/1997 the parties and their respective advocates were informed that the suit would be placed on board for direction on 17/2/1997 and on that date none appeared for the plaintiff and, therefore, it came to be adjourned on 7/4/1997 for dismissal in default in case none would appear for the plaintiff. On the next date none appeared for the plaintiff and in the restoration application filed in some time August 1998 it was contended that the plaintiff and his advocate M/s. Thakore Jariwala and Associates took search of the proceedings on 24/8/1998 and obtained a copy of the order of dismissal. It was further submitted that the plaintiff had changed his residential address and he did not have any intimation regarding the next dates in the suit.

3. There is no doubt that the plaintiff was represented through an advocate. The defendant had contended that in view of the Arbitration Award dated 15/3/1979 nothing remained even otherwise in the suit and more so because partnership became extinct in the year 1979 itself. Article 122 of the Limitation Act

provides for a period of 30 days for filing an application for restoration of the suit dismissed in default. In the instant case the application was filed after about one and half years. This appeal has been filed on or about 26/7/1999 and the farad indicates that for the first time notice was issued on 15/1/2002. It came to be dismissed in default for non removal of office objections and was subsequently restored.

4. In the facts and circumstances of this case, the reasoning given by the trial court in dismissing the Notice of Motion for restoration does not call for any interference and in any case this is not a fit case to exercise the discretionary powers to restore the suit filed in 1980.

5. The appeal is dismissed in limine.

(B.H. Marlapalle,J.)